APPENDIX A

STATUTE

The Civil Aeronautics Act of June 23, 1938, c. 601, 52 Stat. 980 (49 U. S. C., secs. 401, *et seq.*), provides in part as follows:

SEC. 602.

(a) The Administrator of Civil Aeronautics is empowered to issue airman certificates specifying the capacity in which the holders thereof are authorized to serve as airmen in connection with aircraft.

(b) Any person may file with the Administrator of Civil Aeronautics an application for an airman certificate. If the Administrator of Civil Aeronautics finds, after investigation, that such person possesses proper qualifications for, and is physically able to perform the duties pertaining to, the position for which the airman certificate is sought, he shall issue such certificate, containing such terms, conditions, and limitations as to duration thereof, periodic or special examinations, tests of physical fitness, and other matters as the Board may determine to be necessary to assure safety in air commerce. Any person whose application for the issuance or renewal of an airman certificate is denied may file with the Administrator of Civil Aeronautics a petition for reconsideration, and the Administrator of Civil Aeronautics shall thereupon assign such application for hearing at a place convenient to the applicant's

place of residence or employment: *Provided,* That the Board may, in its discretion, prohibit or restrict the issuance of airman certificates to aliens, or may make such issuance dependent on the terms of reciprocal agreements entered into with foreign governments.

(c) Each certificate shall be numbered and recorded by the Administrator of Civil Aeronautics; shall state the name and address of, and contain a description of, the person to whom the certificate is issued; and shall be entitled with the designation of the class covered thereby. Certificates issued to all pilots serving in scheduled air transportation shall be designated "airline transport pilot" of the proper class.

SEC. 609.

The Board may, from time to time, reinspect any aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, may reexamine any airman, and, after investigation, and upon notice and hearing, may alter, amend, modify, or suspend, in whole or in part, any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate if the interest of the public so requires, or may revoke, in whole or in part, any such certificate for any cause which, at the time of revocation, would justify the Administrator of Civil Aeronautics in refusing to issue to the holder of such certificate a like certificate. In cases of emergency, any such certificate may be suspended, in whole or in part, for a period not in excess of thirty days, without regard to any requirement as to notice and hearing. The Board shall

immediately give notice of such suspension to the holder of such certificate and shall enter upon a hearing which shall be disposed of as speedily as possible. During the pendency of the proceeding the Board may further suspend such certificate, in whole or in part, for an additional period not in excess of thirty days.

SEC. 610.

(a) It shall be unlawful—

* * * * *

(2) For any person to serve in any capacity as an airman in connection with any civil aircraft used in air commerce without an airman certificate authorizing him to serve in such capacity, or in violation of the terms of any such certificate.

SEC. 1006.

(a) Any order, affirmative or negative, issued by the Board under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review by the circuit courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

(b) A petition under this section shall be filed in the court for the circuit wherein the petitioner resides or has his principal place of business or in the United States Court of Appeals for the District of Columbia.

(c) A copy of the petition shall, upon filing, be forthwith transmitted to the Board by the clerk of the court; and the Board shall thereupon certify and file in the court a transcript of the record, if any, upon which the order complained of was entered.

(d) Upon transmittal of the petition to the Board, the court shall have exclusive jurisdiction to affirm, modify, or set aside the order complained of, in whole or in part, and if need be, to order further proceedings by the Board. Upon good cause shown, interlocutory relief may be granted by stay of the order or by such mandatory or other relief as may be appropriate: *Provided,* That no interlocutory relief may be granted except upon at least five days' notice to the Board.

(e) The findings of facts by the Board, if supported by substantial evidence, shall be conclusive. No objection to an order of the Board shall be considered by the court unless such objection shall have been urged before the Board or, if it was not so urged, unless there were reasonable grounds for failure to do so.

(f) The judgment and decree of the court affirming, modifying, or setting aside any such order of the Board shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in sections 239 and 240 of the Judicial Code.

APPENDIX B

REGULATIONS

1. The pertinent Air Traffic Rules of the Civil Air Regulations of the Civil Aeronautics Board provide as follows:

(14 C. F. R., 1941 Supp.)

SEC. 60.350. *Minimum Safe Altitudes.*

Exclusive of taking off from or landing upon an airport or other landing area aircraft shall not be flown below the following minimum safe altitudes of flight:

SEC. 60.3500.

An altitude over the congested parts of cities, towns, or settlements, sufficient to permit at all times an emergency landing outside of such areas in the event of complete power failure, but in no case less than 1,000 feet above the ground.

SEC. 60.3502.

1,000 feet above the ground over any Federal penal institution or any open air assembly of persons.

SEC. 60.3503.

500 feet above the ground or water elsewhere than as specified in §§ 60.3500, 60.3501, and 60.3502, or within 500 feet from any mountain, hill, or other obstruction to flight, except as may be specifically approved by the Administrator: *Provided, however,* That seaplanes and amphibians

may be flown below 500 feet, but not below 300 feet, if making a contact flight during daylight hours over open water and where an emergency landing may, at all times, be made, without the aid of power, into the wind and without danger of collision with craft on the surface or other obstructions: *And provided further,* That the restrictions of this paragraph shall not apply to public aircraft, previously authorized by the appropriate governmental agency, to make specific flights below such minimums in the public interest.

* * * * *

(14 C. F. R.:)

SEC. 60.4. *Flight Rules (contact).*

In addition to general or special air traffic rules which apply, the following rules shall govern a contact flight in weather conditions equal to or better than those described in § 60.44, within the limits of a civil airway or control zone of intersection, or elsewhere in interstate or foreign air commerce.

SEC. 60.70. *Prohibited Zones.*

No person shall acrobatically fly an aircraft—

SEC. 60.700.

(a) At any height whatsoever over a congested area of any city, town, or settlement, or over any open air assembly of persons, or over any airport or landing area or within 1,000 feet horizontally thereof, or within any control zone unless the supervision of a Bureau inspector observing flight tests and then only between 2,000 and 5,000 feet above the ground or water.

2. The pertinent Army Air Forces Flying Regulations in effect on January 20, 1943, provide as follows:

A. A. F. REGULATION
No. 60–16

WAR DEPARTMENT,
HEADQUARTERS ARMY AIR FORCES,
Washington, September 9, 1942.

FLYING

Air Traffic Rules

(The following regulations will govern the operation of Army Air Forces aircraft in the continental United States.)

* * * * *

Section I. General Flight Rules

1. *Reckless Operation.*—An air force pilot will not operate aircraft in a reckless or careless manner, or so as to endanger friendly aircraft in the air, or friendly aircraft, persons or property on the ground.

* * * * *

3. *Air Traffic Control Procedures.*—Air force pilots will comply with air traffic control procedures established by competent authority.

* * * * *

10. *Acrobatic Flight.*—No pilot shall perform acrobatics:

a. At any height whatsoever over a congested area of any city, town, or settlement, or over any open-air assembly of persons, or within the area included within a radius of 10 miles of the

center of any airport, or within 10 miles of the center line of any civil airway.

b. At any place other than unrestricted areas.

c. Unless the maneuvers can be completed and the aircraft under complete control at or above 1,500 feet (altitude above the surrounding terrain).

d. At any place, unless the visibility is at least 3 miles and the ceiling at least 3,000 feet, and unless the pilot has first ascertained that there is no danger of collision with other aircraft.

* * * * *

Section II. Contact Flight Rules

* * * * *

16. *Minimum Altitudes of Flight.*

a. Except during take-off and landing, aircraft will not be operated:

(1) below the following altitudes:

(a) 1,000 feet above any building, house, boat, vehicle, or other obstructions to flight.

(b) At an altitude above the congested sections of cities, towns, or settlements to permit an emergency landing outside of such sections in the event of complete power failure.

(c) 1,000 feet above any open air assembly of persons.

(d) 500 feet above the ground elsewhere than as specified above.

(2) Within 500 feet of any obstruction to flight.

b. Any maneuver may be conducted at such altitude above the ground or water as is necessary for its proper execution in places other than specified above, when such maneuver is

required to accomplish an ordered tactical flight, engineering or training mission.

NOTE.—Section I.3 and I.10a of the above regulations were amended to read as follows by A. A. F. Regulation No. 60–16, Amendment of March 6, 1944, now in effect:

> 3. *Air Traffic Control Procedures.*—AAF pilots will comply with air traffic control procedures established by competent authority, and Standard Airport Traffic Control Procedures as approved by Army, Navy, and CAA, effective 1 January 1944.
>
> * * * * *
>
> 10. *Acrobatic Flight.*—No pilot will perform acrobatics:
>
> a. At any height whatsoever over a congested area of any city, town, or settlement, or over any open-air assembly of persons.
>
> b. Within the area included within the radius of five miles of the center of any airport, except when such airport is within an established local flying area; or within the limits of a civil airway except within that portion lying adjacent to, but outside of, a range approach channel.

Army Regulation No. 95–15, issued by General Marshall, Chief of Staff, on May 3, 1944, provides that "Civil Aeronautics Administration rules and regulations will be complied with when applicable" (Section 17, "Flight Regulations"). The other changes made by the recent amendment are not important here. See Appendix C, p. 29, *infra*.

APPENDIX C

LETTER

Letter from Acting Air Judge Advocate concerning parallel provisions of the Army Air Forces Flying Regulations and the Civil Air Regulations of the Civil Aeronautics Board:

HEADQUARTERS, ARMY AIR FORCES,
Washington, 14 June 1944.

SOLICITOR GENERAL,
Department of Justice, Washington, D. C.
(Attention: Mr. David L. Kreeger.)

DEAR SIR: The Department of Justice has requested the comment of this office with respect to certain parallel provisions of Army Air Forces regulations and Civil Aeronautics Authority rules. We are pleased to advise as follows:

In the opinion of this office there is no conflict whatever between Army Air Forces flying regulations and Civil Aeronautics Authority flight rules generally or between sec. 60.700–1, CAA Rules, and par. 10, AAF Reg. 60–16, 9 September 1942, particularly. The language and purport of these latter restrictions on acrobatics are practically identical except that the AAF provisions cited are the most stringent in that they flatly prohibit acrobatics under any conditions within 10 miles of an airport or airway.

So also par. 16, AAF Reg. 60–16, 9 September 1942, is the opposite number to sec. 60.350, CAA

Rules, and prohibits flights below 500 feet or within 500 feet of any obstruction to flight except when landing and taking off.

It is understood that your office has been furnished with a copy of the AAF regulation referred to. While this regulation has been superseded under date 6 March 1944, the new AAF Reg. 60–16 contains no changes important to the within remarks.

In order to stamp out dangerous flying practices the Army Air Forces have been obliged to adopt a policy of imposing severe punishment for wilful and serious violations of flying regulations. Intentional buzzing within 50 feet of a control tower would find no excuse either in the fact that the flight was a test mission or in the fact that radio contact with the tower relative to a normal approach was delayed. Such conduct frequently results in the general court martial of the flying officer concerned. Upon conviction, a sentence of substantial forfeiture of pay is imposed unless in an extreme case dismissal from the service is deemed appropriate.

Sincerely yours,

(Signed) EARL S. PATTERSON,
Earl S. Patterson,
Colonel, J. A. G. D.,
Acting Air Judge Advocate.

U. S. GOVERNMENT PRINTING OFFICE: 1944